(1)

91-1837

Supreme Court, U.S.
FILED
MAY 14 1992
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

October Term, 1991

SCOTT MANATT,

Petitioner,

v.

ARKANSAS STATE BOARD
OF ELECTION COMMISSIONERS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

SCOTT MANATT
P. O. Box 473
Corning, Arkansas 72422
(501) 857-3163
Petitioner and Counsel of Record

TREVATHAN PRESS • LITTLE ROCK

QUESTION FOR REVIEW

UNDER THE EQUAL PROTECTIONS OF THE LAWS CLAUSE OF THE FOURTEENTH AMENDMENT, DID THE LOWER COURTS ERR IN APPLYING TO THE STATE OF ARKANSAS THE 'LEGITIMATE GOVERNMENTAL INTEREST' STANDARD OF SCRUTINY, AS OPPOSED TO THE 'OVERWHELMING GOVERNMENTAL INTEREST' STANDARD IN ALLOWING THE STATE UNDER COLOR OF STATUTE (NOT THE PARTIES) TO INFORM THE ELECTORATE AS TO CANDIDATE QUALIFICATION BY ALLOWING CANDIDATES FOR PUBLIC OFFICE TO PLACE QUALIFYING 'NICKNAMES' OR 'TITLES' ON THE GENERAL ELECTION BALLOT SUCH AS 'JUDGE,' 'GOVERNOR,' 'LIEUTENANT GOVERNOR,' 'REPRESENTATIVE,' 'SENATOR,' ETC. IF SAID NICKNAMES RESULT IN AN ADVANTAGE TO THE INCUMBENT AND/OR A RESULTING VOTER DILUTION UNDER THE FOURTEENTH AMENDMENT RESULTING IN A LESS-THAN-NEUTRAL BALLOT AS APPLIED TO THE FUNDAMENTAL RIGHT OF VOTING AND FRANCHISE?

PARTIES TO THE PROCEEDINGS

The petitioner, Scott Manatt, is an attorney and a registered voter in Clay County, Arkansas.

The Arkansas State Board of Election Commissioners is an agency of the State of Arkansas and, as such, is represented by the Attorney General of Arkansas.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceedings	ii
Table of Authorities Cited	iv
Opinions Below	1
Jurisdiction	2
Statutory Provisions	2
Statement of the Case	3
Reasons for Granting the Writ	7
Appendix	
Order, Eighth Circuit Court of Appeals	A-1
Opinion, Eighth Circuit Court of Appeals	A-2
Opinion, District Court, Eastern District of Arkansas	A-4
Arkansas Code Annotated §7-7-305(c)	A-7

TABLE OF AUTHORITIES

Page

Cases:

Anderson v. Martin, 375 U.S. 399 ..... 2, 8, 9, 14

Anderson v. Celebreeze, 460 U.S. 780 2

Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) 8, 14

Moore v. Ogilvie, 394 U.S. 814, 89 S.Ct. 1493 (1969)..... 10

San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 17, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) 8

San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16, *rehearing denied* 411 U.S. 959, 93 S.Ct. 1919, 36 L.Ed.2d 418 13

Constitutional Provisions:

Constitution of the United States, Amendment 14 §1 ..... 2, 3, 4, 5, 7, 9, 14

Statutory Provisions:

Arkansas Code Annotated §7-7-305(c) 2, 3, 4

IN THE

Supreme Court of the United States

October Term, 1991

SCOTT MANATT,

Petitioner,

v.

ARKANSAS STATE BOARD
OF ELECTION COMMISSIONERS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is unpublished, was filed February 26, 1992 and appears at page A-2 of the Appendix. The order denying the rehearing and suggestion for hearing *en banc* were filed April 8, 1982 and appears at page A-1 of the Appendix.

The district court ruling, from which the original appeal was taken, cited as *Manatt v. Arkansas State Board of Election Commissioners*, an unpublished opinion, was filed July 2, 1991. It appears at Page A-4 of the Appendix.

JURISDICTION

The Court has jurisdiction, and jurisdiction should be under Rule 10.1(c) in that the United States District Court and the Eighth United States Circuit Court of Appeals, now appealed, has decided a federal question—an important question of federal law—which has not been, but certainly should be, settled by the Court. The United States District Court and the Eighth United States Circuit Court of Appeals, now being appealed, has decided a federal question in a way that conflicts with the applicable decision of this honorable Court in *Anderson v. Martin*, 375 U.S. 399, 403, and *Anderson v. Celebreeze*, 460 U.S. 780, in the determination and the implementation of the equal protections under the Fourteenth Amendment as same pertains to voting and franchise as a "fundamental right" and which involves a question of Arkansas statutes.

STATUTORY AND CONSTITUTIONAL PROVISIONS

Arkansas Code Annotated §7-7-305(c): Any person who shall file for an elective office in this state may not use more than three (3) given names, one of which may be a nickname or any other word used for the purpose of

identifying such person to the voters and may add as a prefix to his name an abbreviation of any professional title which he has a legal right to use.

Constitution of the United States, Amendment 14 §1: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the Equal Protection of the Laws.

STATEMENT OF THE CASE

The question for review in this matter is the treatment by the United States District Court for the Eastern District of Arkansas and the Eighth Circuit Court of Appeals of Arkansas Code Annotated §7-7-305(c) which result in a voter dilution in violation of the equal protection of the laws clause of the 14th Amendment. Federal jurisdiction in the district court and in the court of appeals was based upon and under the Constitution of the United States, 14th Amendment, same being the Equal Protection of the Laws clause, as a case of voter dilution.

On October 18, 1990, petitioner, Scott Manatt, the Republican nominee for the Arkansas Supreme Court, in said capacity and individually as a registered voter of the State of Arkansas, filed an action in the United States District Court seeking both a temporary and permanent

injunction against the State of Arkansas, the State Board of Election Commissioners, the Attorney General of Arkansas and the Secretary of State, in their capacities, seeking to have two election ballot statutes of the State of Arkansas declared unconstitutional, both as to the statute and its application. One of said being Arkansas Code Annotated §7-7-305(c), which reads:

> Any person who shall file for any elective office in this state may use not more than three (3) given names, one of which may be a nickname or any other word used for the purpose of identifying such person to the voters and may add as a prefix to his name an abbreviation of any professional title which he has a legal right to use. . . .

Manatt was seeking to temporarily and permanently enjoin the use of the statute which allowed the use of titles such as "judge," "governor" and "lieutenant governor" on the ballots of the State of Arkansas, alleging that same is electioneering on the ballot on election day and resulted in a wrongful vote dilution and violated the equal protection of the laws clause of the 14th Amendment, together with other laws. Further, petitioner alleged that the "nicknames" on the ballot was designed to give advantage to the incumbents and/or the majority party of Arkansas. Manatt further alleged that the statutes were discriminatory in favor of the incumbency, was a voter dilution and was a violation of the equal protection of the laws clause of the 14th Amendment by placing candidate qualifications and/or credentials on the ballot and denied to the defendant and others similarly situated the equal protec-

tions and benefits of the law.

Manatt sought both a temporary and permanent injunction and for a determination and declaration that the statutes were unconstitutional, this petition being as to one of said statutes above quoted. Manatt was seeking a temporary restraining order prior to the election and injunction, which was denied, and appeal was taken. The election was held prior to any action of the Eighth Circuit, and the appeal was dismissed on motion of petitioner, who proceeded to the United States District Court. The United States District Court ruled as a matter of law that, under Article 3 of the Constitution, the court did not have jurisdiction in that no case or controversy existed at the time the case was decided in that the election was over and the issue was moot and further requiring that a litigant must have suffered some actual injury to be redressed.

Petitioner respectfully maintains that the district court, as affirmed by the court of appeals, erred in that this is a question under the 14th Amendment of the equal protection of the laws clause and seeks both a temporary and permanent injunction under the 14th Amendment in its application and treatment of what is alleged to be unconstitutional statutes. Petitioner submits that the injury had been done to this plaintiff while the statute or statutes are still on the books of the State of Arkansas, and if same are unconstitutional, they remain unconstitutional and a continuing vote dilution. The relief sought was for equal protection of the laws and to avoid a wrongful voter

dilution and to avoid granting an "electioneering at the polling place" advantage to the incumbent, but not to the challenger—which allows the incumbency to have a greater potential for election than a challenger. The district court, as affirmed by the Eighth Circuit, ruled that the State of Arkansas has a legitimate governmental interest in informing the electorate as to candidates. Petitioner argues that the state should not be in the politicking business and that, only if there is an **"overwhelming governmental interest,"** should the state get involved. Petitioner argues that the lower courts applied the improper standard as to its treatment of a "fundamental right."

REASONS FOR GRANTING THE WRIT

Scott Manatt would respectfully submit to this honorable Court that the Eighth Circuit order of February 26, 1992, an unpublished opinion in the above-styled matter, in the opinion of appellant, now petitioner, overlooked or misapprehended the equal protection of the laws clause of the 14th Amendment as addressed and applying to the voter dilution created by "nicknames" on the ballot and the invidious effect on future races which tend to act as a prior restraint on candidates seeking and filing for public office. That the court treated the action as strictly an incumbency status on the ballot and apparently **overlooked** the fact that, in the attorney general's race in the State of Arkansas, the then lieutenant governor had on the ballot in the attorney general's race "Lt. Gov.," which was not incumbency, but rather was electioneering and political information as a matter of law. It weighed the ballot by exhibiting one candidate's qualifications, yet petitioner could not have placed "The Honorable" on the ballot. That this matter stands to repeat itself and that by reason of this being an election year, 1992, continued use of the statutes will result in irrefutable and irreparable harm to this petitioner and unknown and unnamed future candidates. That the Court should hear this matter and that the Court should enjoin the elections in the State of Arkansas pending a determination. That an immediate injunction should issue forthwith.

The "nickname" and/or titles result in a voter dilution to the petitioner by having the petitioner's vote

counted less than the Democrat counterpart. The lower court concluded that "Arkansas had a legitimate governmental interest in informing the electorate as to candidacy, citing *Anderson v. Martin*, 375 U.S. 399, but misapprehended the fact that on a voter dilution question which affects the liberty interest as set forth in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), **under the Equal Protection Clause,** if a classification "impinges upon a fundamental right explicitly or implicitly protected by the Constitution, . . . **strict judicial** scrutiny" is required, regardless of whether the infringement was intentional; it is suggested to this Court that voting is a **"fundamental right"** and if same be true, then if a classification **"impinges upon a fundamental right" explicitly or implicitly** protected by the Constitution, **strict judicial scrutiny is required.** Where fundamental rights and liberties are asserted under equal protection clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. *Harper b. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966).

Petitioner would suggest to this honorable Court that the question of a voter dilution is a **"fundamental right"** and that the **strict scrutiny standard for the state is not whether or not there is a legitimate governmental interest in informing the electorate as to candidates but whether or not there is an "overwhelming" governmental interest** in informing the electorate as to candidates' qualifications sufficient to justify the diminution in value of a voter's vote and to create a restraint on future filings and

political races by discouraging candidates from challenging incumbents—forcing the would-be candidates to recognize the impossible odds as created by the state statute to the advantage of the other candidates. Petitioner simply states that the State of Arkansas should not be in the politicking business of informing voters as to its perceived qualifications, but rather this is the responsibility of the candidates and/or the political parties. To do otherwise makes the State of Arkansas a "Democrat" and operating as a "Democrat" in violation of the Equal Protection of the Laws clause of the 14th Amendment.

In this case, the petitioner submits to this honorable Court that the **state has no legitimate government interest,** much less an **"overwhelming" interest** in informing the electorate as to candidates if that information **either reduces a vote** or **favors a candidate** or party or **impinges** or **infringes upon the fundamental right of voting.** That this was a stretching of *Anderson v. Martin. Anderson* is and must be rooted in fairness.

The petitioner submits that, as to the two points raised in the original appeal that the separate argument as to party identification, such as Democrat, Republican or Independent, may have some argument of a "governmental interest" in which the state would have a legitimate interest. But as to the second argument (the subject of this petition) as to "nicknames" and titles on the ballots, and to allow such characterizations as religious preferences, by use of Reverend, college degrees such as Doctor, former occupations such as Commissioner or former

employment allows bias, prejudice and favoritism on the ballot, giving greater weight to the incumbent than a Republican challenger in the question of the partisan election of judges as opposed to appointment or merit selection of judges. This is NOT FAIR!

Petitioner respectfully submits that certiorari should be had to reach to the deeper question of the **"strict scrutiny"** required and the standard of **"legitimate governmental interest"** as compared to a resulting voter dilution and to ensure fundamental fairness and a further determination that the state, under the guise of **"legitimate government interest"** should not be allowed to be engaged or be partisan, nor to put the **voter qualifications on the ballot itself to the detriment** of the **minority voter** to the detriment of the voting public generally; and to the detriment of any potential candidates and to act as a deterrent to future campaigns. This petitioner would desire to seek election again in 1992 and, as of this date, is the Republican nominee for the court, subject to the will of the people in November 1992, but with the ruling as it now stands, will have difficulty running against a sitting elected justice with the ballot reading "Justice." It may be that as to the race as entered during the pendency of this appeal without injunctive relief as to the statute in issue, that the viability of the candidate will diminish and the candidate will be forced to withdraw or lose the election. In the case of *Moore v. Ogilvie*, 394 U.S. 814, 89 S.Ct. 1493 (1969), the Court held that "a justiciable controversy was presented by challenge to constitutional validity of an Illinois statute making classifications of voters which fa-

vored residents of some counties over residents of others, the case was not moot since problem was a continuing one."

That the Court should further consider that the voting qualifications on the ballot have the effect of acting as a prior restraint on any candidate seeking public office by reason of the predetermined use of positions and titles and the inherent unfair advantage. That to allow titles on the ballot would work to the detriment of the honest but untried non-professional candidate seeking public office by way of free elections within this state and this nation running not only against an opponent but also the State of Arkansas involved as a Democrat.

Certiorari should be granted by this Court, and the same should be heard for all the right reasons (the least of which is whether or not this candidate and petitioner should ever be elected to public office or should ever seek another public bid). The overriding public concern for the people of the State of Arkansas is whether or not the State of Arkansas will have and will develop a two-party system within its state. If there exists a prior restraint, if there exists an unequal and disparate effect by reason of the way elections are had, and if this exists by reason of a Democratic legislature being able to pass laws that favor incumbencies and/or the Democratic Party, then the two-party system in Arkansas will never develop. Republicans in Arkansas will never co-exist with the Democratic Party and will never survive. At this point in time, there are no Republicans elected to constitutional

offices within the State of Arkansas, neither of the United States senators and only one member of Congress is a Republican. County offices throughout the State of Arkansas have primarily Democratic incumbents with the statutes giving them the right to be identified not as the incumbent but rather to have them identified on the ballot by title. For example, a sheriff runs as a "sheriff" **and a** "Democrat." A **J. P.** runs as **Justice.** A state representative runs as **Representative.** A state senator runs as **Senator.** In the attorney general's race of the State of Arkansas, the lieutenant governor won the race by running as "Lieutenant Governor" in the attorney general's race. We as a state and we as a nation continue to be impressed by titles, whether they be earned, nomenclature or honorary, nonetheless they are titles. Titles on the ballot go further than the question of incumbency, they go further than the question of "legitimate state interest." "Titles" on the ballot **become** "electioneering" and qualifying factors in determining who is the most qualified candidate with the State of Arkansas, acting as a politician, helping to make the decision. So long as the Republican Party remains in Arkansas and so long as qualified Republicans run for those jobs, then this barrier, not an invisible barrier, but rather a very real, true, tried and tested barrier, remains. It remains as a "voter dilution." It remains as a situation where the primaries throughout Arkansas are favored because there are so few Republican primaries within the state that people are afraid of losing their vote and continue to vote in the Democratic primaries. That people have a fundamental right to engage in the political process and to vote, but because all the sheriffs and the local

offices throughout Arkansas traditionally are held by Democrats and because most all the contested races in Arkansas are held by Democrats—then a "prior restraint" and voter dilution is created. By reason of this "voter dilution" and "prior restraint" on the candidates' rights to have an equated and fair ballot, the candidates who change parties, as this petitioner did, must look to the practicalities and restraints in order **to win, to place** or **to show** in a biased, diluted election. While the state may have an abiding interest in the conduct of its elections, and while the state may very well be concerned, the overriding public interest is whether or not the citizens have the "fundamental right," a right to have a fair and equal election. In determining whether particular state law impinges on fundamental right or interest so as to be subject to strict judicial scrutiny under the equal protection clause, the United States Supreme Court does not pick out particular human activities, characterize them as "fundamental" and give them added protection, but to the contrary, the Court simply recognizes, as it must, established constitutional right and gives to that right no less protection than the Constitution itself demands. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16, *rehearing denied*, 411 U.S. 959, 93 S.Ct. 1919, 36 L.Ed.2d 418 (1973).

The people have a fundamental right to engage in a meaningful multiparty franchise, the right to align and pick and choose. The way the ballots are, petitioner would respectfully submit that the process within the state is designed to suppress and limit the free expression of ideas. It is designed to suppress and limit new faces on

the political scenes. It is designed to limit, suppress and control the ability to raise money, to finance campaigns and to engage with the electorate in the election process. The ruling of the Eighth Circuit now standing in unpublished form secures to the State of Arkansas for generations to come the certainty of a one-party state and the security and perpetuation of the Democratic Party in leadership positions with little or no chance of a successful challenge. With much respect for this honorable Court, the petitioner must ask the Court to review the Eighth Circuit position on what is good for the State of Arkansas and what "fundamental rights" exist to the people of Arkansas and the Republican Party and the candidates as a voter and the candidate as a nominee have to engage in a partisan but fair political process under the Fourteenth Amendment. The standard here as set forth in *Anderson, supra,* goes further than the issue and that is "strict scrutiny" must be demanded, strict scrutiny must be applied, and as the Court correctly pointed out in the case of *Harper, supra,* at any time that a liberty interest is involved, **strict scrutiny is required.** What greater liberty interest is at stake than the right to vote, than the right to engage in meaningful elections, than the right to promote and precipitate the two-party system and the right to engage equally and without prior restraint in the fundamental rights under the Fourteenth Amendment of equal access to the ballot and the equal weight of each voter with one man having one vote and that one vote count as one vote.

CONCLUSION

In conclusion, the petitioner respectfully prays and suggests to the Court that this matter should be heard by the full Court, the writ of certiorari allowed and would renew the request for all the relief originally asked, including the injunctive relief and a determination that a liberty interest or "fundamental right" is being diluted and a prior restraint on a two-party system is in place by reason of the statutory interference and involvement by the State of Arkansas in fair elections and the "fear of defeat" by a candidate such as the petitioner created by the statutes giving unfair electioneering advantage slows candidates and stops candidates from entering future races as a "Republican" in a one-party "Democrat" state by reason of the chilling denial of the protection of the liberty interest in this our republican form of government by reason of the State of Arkansas becoming involved in campaigns and "informing" the public about candidates on the ballot.

Respectfully submitted,
SCOTT MANATT
Bar No. 70044
P. O. Box 473
Corning, Arkansas 72422
(501) 857-3163
Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 91-2729EALR
Scott Manatt,

Appellant,

vs.

Arkansas State Board of Election Commissioners;
State of Arkansas; et al.,

Appellees.

Order Denying Petition for Rehearing and Suggestion for Rehearing *en Banc.*

The suggestion for rehearing *en banc* is denied. The petition for rehearing is also denied.

April 8, 1992

Order Entered at the Direction of the Court:
MICHAEL E. GENS
Clerk, U. S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 91-2729

Scott Manatt,

Appellant,

v.

Arkansas State Board of Election Commissioners, State of Arkansas; Bill McCuin, Secretary of State of Arkansas; Winston Bryant, in his capacity as Attorney General of the State of Arkansas,

Appellees.

Appeal from the United States District Court for the Eastern District of Arkansas.

[UNPUBLISHED]

Submitted: February 5, 1992
Filed: February 26, 1992

Before McMILLIAN, WOLLMAN, and LOKEN, *Circuit Judges.*

PER CURIAM.

Scott Manatt appeals the district court's[1] dismissal of his challenge to the constitutionality of two Arkansas election statutes. We affirm.

---

[1]The Honorable Henry Woods, United States District Judge for the Eastern District of Arkansas.

Manatt, an unsuccessful Republican Party nominee for the Arkansas Supreme Court in 1990, alleged that the Arkansas statute allowing a candidate to use a title, such as "Judge," on the ballot, Ark. Code Ann. §7-7-305(c) (Michie 1987), and the statute requiring that party designation, or the term "independent," appear on the ballot, Ark. Code Ann. §7-5-208(h)(5), (Michie 1987), violated the Voting Rights Act (Act), 42 U.S.C. §§1971-1974, and denied him equal protection, citing the Fourteenth Amendment and 42 U.S.C. §1983.

After careful consideration, we conclude that the district court properly denied these claims. The alleged bases for discrimination, incumbency status and party affiliation, do not state a claim under the Voting Rights Act. *See Roberts v. Wamser*, 883 F.2d 617, 621 (8th Cir. 1989) (purpose of Act is protecting minority voters). There was no equal protection violation because there are sufficient government justifications for the statutes. *See Anderson v. Celebrezze*, 460 U.S. 780 (1983). The State of Arkansas has a "legitimate governmental interest in informing the electorate as to the candidates." *Anderson v. Martin*, 375 U.S. 399, 403 (1964).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

Scott Manatt *Plaintiff*

v. No. LR-C-90-731

Arkansas State Board of Election Commissioners, State of Arkansas; Bill McCuen, Secretary of State; and Steve Clark, Attorney General *Defendants*

ORDER

Plaintiff, Scott Manatt, was a Republican candidate for a position on the Arkansas Supreme Court during the 1990 general election. Less than one month before the election, he filed the complaint at bar challenging the legality of Ark. Code Ann. 7-5-208(h)(5)[1] and Ark. Code Ann. 7-7-305(c).[2] It was his position that these statutes violated the Voting Rights Act ("the Act"), 42 U.S.C. §1971-1974, and the Fourteenth Amendment.

In connection with his complaint, plaintiff filed a motion for a temporary restraining order and injunction.

---

[1] "Beside the name of each candidate in the general election shall be his party designation or the name 'INDEPENDENT' if he represents no officially recognized party."

[2] "Any person who shall file for any elective office in this state may use not more than three (3) given names, one of which may be a nickname or any other word used for the purpose of identifying such person to the voters and may add as a prefix to his name an abbreviation of any professional title which he has a legal right to use.

His motion was denied.[3] *See* Order of October 25, 1990. He appealed the order denying the motion but later dismissed his appeal. *See* Order of November 30, 1990.

The Court thereafter scheduled the case for trial. Approximately two weeks before the trial date, the defendants[4] filed the pending motion to dismiss or, in the alternative, motion for summary judgment.[5] This motion was untimely, and it is now denied for that reason. The case proceeded to trial. At the conclusion of the trial, the Court made findings of fact and conclusions of law dismissing the complaint at bar. In accordance with those findings and conclusions, the Court enters the following order.

At the outset, the Court finds that it has no jurisdiction to entertain the complaint at bar. Plaintiff has failed to present a case or controversy.[6]

---

[3] The order contained a footnote stating, "The Court will issue a second order giving the reasons for its belief [that it is unlikely plaintiff can prevail on the merits]." See Footnote 4. Upon further reflection, the Court decided to entertain a response from the State of Arkansas and allow this case to proceed.

[4] The Arkansas State Board of Election Commissioners; Bill McCuen, Secretary of State; and Steve Clark, former Attorney General.

[5] Plaintiff filed a motion to quash in response to this motion. His motion is denied.

[6] Under Article III of the Constitution, the Court has no jurisdiction unless a case or controversy exists at the time the case is decided, not just at the time the complaint was filed. See Bush v. Taylor, 912 F.2d 988, 991 (8th Cir. 1990) [citations omitted]. " 'To satisfy the Art[icle] III case-or-controversy requirement, a litigant must have suffered some actual injury that can be redressed by a favorable judicial decision.' " Id. [quoting Iron Arrow Honor Society v. Heckler, 464 U.S. 67, 70 (1983). If the decision would not afford a litigant some actual redress, the Court would be issuing only an advisory opinion, something it is not empowered to do. See Id.

Assuming, *arguendo*, that the Court has jurisdiction to resolve this dispute, plaintiff has failed to state a claim for relief under the Act.[7] Plaintiff has failed to demonstrate, or even allege, some form of racial discrimination.

Plaintiff has also failed to state a claim for relief under the Fourteenth Amendment.[8] The use of party designations and professional titles meet legitimate government interests in informing the electorate as to candidates.

In conclusion, the motion to dismiss or, in the alternative, motion for summary judgment is denied as untimely. The motion to quash is also denied. In accordance with the findings and conclusions made at the conclusion of the trial in this case, the complaint at bar is dismissed with prejudice.

IT IS SO ORDERED this 1st day of July, 1991.

HENRY WOODS
U. S. District Judge

---

[7] "The [Act] was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century." South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966). See also Allen v. State Board of Elections, 393 U.S. 544, 548 (1969) ("[T]he Act implemented Congress' firm intention to rid the country of racial discrimination in voting.") Given this purpose, a challenge made pursuant to the Act necessarily requires a threshold showing of some form of racial discrimination.

[8] His Fourteenth Amendment claim is brought pursuant to 42 U.S.C. §1983.

ARKANSAS CODE ANNOTATED §7-7-305(c)

Any person who shall file for any elective office in this state may use not more than three (3) given names, one of which may be a nickname or any other word used for the purpose of identifying such person to the voters and may add as a prefix to his name an abbreviation of any professional title which he has a legal right to use. The name of every candidate shall be printed on the ballot in the same form as the candidate signed the political practice pledge. No candidate shall be permitted to change the form in which his name will be printed on the ballot after the deadline for filing the political practice pledge.

Supreme Court, U.S.
FILED
JUN 9 1992
OFFICE OF THE CLERK

(2)

No. 91-1837

In The Supreme Court of the United States

October Term, 1991

SCOTT MANATT,

Petitioner,

v.

ARKANSAS STATE BOARD OF ELECTION COMMISSIONERS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

WINSTON BRYANT
Attorney General
Counsel of Record

By: Jeanette L. Hamilton
Assistant Attorney General
200 Tower Building
323 Center Street
Little Rock, AR 72201
(501) 682-2007
Attorneys for Respondent

PARAGON PRINTING • LITTLE ROCK, ARKANSAS

BEST AVAILABLE COPY

QUESTION PRESENTED FOR REVIEW

WHETHER THE LOWER COURTS ERRED IN APPLYING THE LEGITIMATE GOVERNMENTAL INTEREST STANDARD, RATHER THAN THE OVERWHELMING GOVERNMENTAL INTEREST STANDARD, IN DETERMINING THE CONSTITUTIONALITY OF ARK. CODE ANN. §7-7-305(c) UNDER THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE.

TABLE OF CONTENTS

Question Presented for Review i
Table of Authorities iii
Jurisdiction iv
Statement of the Case v
Summary of the Argument viii
Argument 1
Conclusion 6

TABLE OF AUTHORITIES

CASES **PAGE**

Anderson v. Celebrezze, 460 U.S. 780 (1983) 1,2,3
Anderson v. Martin, 375 U.S. 399 (1964) ..... passim
McNeil v. Springfield Park District, 851 F.2d 937, (7th Cir. 1988) 5
Roberts v. Wamser, 883 F.2d 617 (8th Cir. 1989) 2
Thornburg v. Gingles, 478 U.S. 30 (1986) 4

CONSTITUTIONAL PROVISIONS:

Constitution of the United States, Amendment 14 2,3

STATUTORY PROVISIONS:

Ark. Code Ann. §7-7-305(c) 1,4,5

JURISDICTION

The Eighth Circuit Court of Appeals entered its Order affirming the District Court's decision on February 26, 1992. The Order Denying Petition for Rehearing was filed on April 8, 1992. Petitioner seeks review by this Court under Rule 10.1(c).

Respondent submits that this matter should not be reviewed on writ of certiorari. Rule 10.1(c), invoked by Petitioner as the basis for jurisdiction, provides that jurisdiction may be founded upon a decision by a United States Court of Appeals of an important question of federal law which has not been, but should be, settled by this Court; or has decided a federal question in a way that conflicts with applicable decisions of this Court. Because the Eighth Circuit Court of Appeals neither decided a question of federal law which has not been decided by this Court nor decided a federal question in conflict with applicable decisions of this Court, jurisdiction should not be exercised.

STATEMENT OF THE CASE

The question presented for review by the Petitioner is whether the lower Courts applied the proper standard of scrutiny under the Fourteenth Amendment in determining the constitutionality of Ark. Code Ann. §7-7-305(c).

Petitioner Scott Manatt is an attorney practicing law at Corning, Arkansas. He was a Republican candidate for a position on the Arkansas Supreme Court in the November, 1990, general election in Arkansas.

Prior to the election, on October 18, 1990, Petitioner filed a complaint in the U.S. District Court, Eastern District of Arkansas, against the Arkansas State Board of Election Commissioners, seeking declaratory relief and temporary and permanent injunctive relief. He alleged that two Arkansas statutes were unconstitutional as being in violation of the Voting Rights Act, 42 U.S.C. §1971-1974, and the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment claim was brought pursuant to 42 U.S.C. §1983.

The statutes challenged by Petitioner were Ark. Code Ann. §7-7-208(h) and Ark. Code Ann. §7-7-305(c). Ark. Code Ann. §7-7-208(h) provides that a candidate's party designation or the term "Independent" shall be placed beside the candidate's name on the general election ballot. Ark. Code Ann. §7-7-305(c) permits a candidate to use a nickname or professional title on the election ballot. (A-7). Petitioner contended that these statutes operated to discriminate against him as a member of the Republican party, the minority party in Arkansas, and as a non-judge. Petitioner now seeks review by this Court only of the lower Court decisions as to §7-7-305(c).

Petitioner lost the November 6, 1990, election to the incumbent, Democrat candidate. Prior to the election, on October 24, 1990, Petitioner filed a Motion for Temporary Restraining Order and Injunction, which was denied on October 25, 1990. Petitioner then filed a Notice of Appeal and Request for Expedited Appeal. An Order was entered on November 27, 1990, dismissing the appeal.

After a bench trial on July 1, 1991, an Order was entered by the District Court on July 2, dismissing the Complaint on the basis that no case or controversy had been presented and that Petitioner had failed to state a claim for relief under the Voting Rights Act and the Fourteenth Amendment. (A-4).

Petitioner filed a Notice of Appeal to the Eighth Circuit Court of Appeals, who affirmed the lower Court's decision. Regarding the Voting Rights Act claim, the Court held that incumbency status and party affiliation fail to state a claim under the Voting Rights Act. The basis for affirming as to the Fourteenth Amendment claim is that the State of Arkansas has a legitimate government interest in informing the voters of candidates' qualifications. (A-2).

The sole question for review is whether the lower Courts applied the correct standard in determining the Fourteenth Amendment issue regarding §7-7-305(c). Petitioner contends that a stricter standard should be applied, that is, the overwhelming governmental interest standard. Respondent's position is that the proper standard of review was applied.

Respondent will also argue that certiorari should be denied on the basis that this case neither presents an important question of federal law which should be settled by this Court

nor conflicts with any prior decisions of this Court under Rule 10.1(c).

SUMMARY OF THE ARGUMENT

Petitioner contends that this matter should be reviewed on writ of certiorari under Rule 10.1(c) because the lower Courts decided an important federal question which has not, but should be, decided by this Court; and that the lower Courts decided a federal question in a way that conflicts with *Anderson v. Martin*, 375 U.S. 399 (1964) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

Respondent's position is that no important federal question was decided by the lower Courts which has not already been addressed in this Court. The District Court's decision, and the Eighth Circuit Court of Appeals' decision, both followed this Court's ruling in *Martin, supra*, with respect to Petitioner's Fourteenth Amendment claim, the only claim relevant to the question presented for review.

Regarding Petitioner's second contention, no issue was decided by the lower Courts in conflict with this Court's decisions in *Anderson v. Martin, supra*, or *Anderson v. Celebrezze, supra*. Petitioner cites *Celebrezze*, but offers no argument as to how an issue in the instant case was settled in conflict with this Court's ruling therein. With respect to Martin, again Petitioner offers no argument directly showing how the decision in the instant case conflicts with *Martin*.

With respect to Petitioner's contention that the lower Courts applied an erroneous standard, the legitimate governmental interest standard, in determining that Ark. Code Ann. §7-7-305(c) is not unconstitutional as being in violation of the Fourteenth Amendment Equal Protection Clause, Petitioner confuses the right to vote, a fundamental right, with the right to run for elective office. Because the issue is Petitioner's right to run for office, the Courts applied

the proper test in determining that a statute allowing candidates to use titles or nicknames on the ballot was in keeping with Arkansas' legitimate governmental interest in informing voters of candidates' qualifications.

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO REVIEW THIS CASE ON WRIT OF CERTIORARI

The United States Supreme Court Rule invoked by Petitioner as conferring jurisdiction upon this Court is Rule 10.1(c), which provides that jurisdiction may be exercised "[W]hen a state court or a United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." Petitioner argues both: (1) that the lower Courts decided a federal question which has not, but should be, settled by this Court, and (2) that the lower Courts decided a federal question in conflict with *Anderson v. Martin*, 375 U.S. 399 (1964) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

Petitioner's first argument fails because no important question of federal law was decided by the lower Courts. With respect to Petitioner's claim under the Voting Rights Act, the lower Courts found that Petitioner lacked standing under the Act. The relevant allegation of Petitioner's complaint is that Ark. Code Ann. §7-7-305(c), which allows a candidate for office to use a nickname or title on the election ballot, violated Petitioner's rights as a candidate for public office in Arkansas. In November, 1990, Petitioner ran an unsuccessful race for a position on the Arkansas Supreme Court against an incumbent judge. He contends that Ark. Code Ann §7-7-305(c) was discriminatory against him because it allowed his opponent to preface his name with the "Judge" on the election ballot, creating an unfair advantage. The District Court held, and the Eighth Circuit Court of Appeals affirmed, that Petitioner

had failed to state a claim under the Voting Rights Act because only one whose voting rights have been denied or impaired has standing under the Act. In other words, the Act is limited to aggrieved voters and does not extend coverage to aggrieved candidates for office. See, *Roberts v. Wamser*, 883 F.2d 617 (8th Cir. 1989).

With regard to the claim relevant to the question for review, the Fourteenth Amendment claim, the courts below held that the practice of allowing nicknames or titles on the election ballot serves a legitimate governmental interest in informing the electorate as the candidates' qualifications. As the lower Courts were following this Court's decision in *Anderson v. Martin, supra*, there is no important question of federal law raised in these proceedings which has not already been addressed by this Court. Therefore, the Petitioner's first argument urging this Court's exercise of jurisdiction under Rule 10.1(c) fails.

Petitioner's second argument favoring jurisdiction is that the lower Court's decisions are in conflict with this Court's decisions in *Anderson v. Martin, supra*, and *Anderson v. Celebrezze*, 460 U.S. 780 (1983). A brief review of each of these cases reveals that there is no conflict between the lower Courts' rulings herein and the reference decisions of this Court.

In *Martin*, the issue was whether a Louisiana statute requiring racial designations of candidates on ballots was constitutional. The Court held that the requirement violated the Equal Protection Clause of the Fourteenth Amendment since a candidate's race does not bear upon his qualifications for office. The court reasoned that the provision could not "...be deemed to be reasonably designed to meet legitimate governmental interests in informing the electorate as to

candidates." *Martin* at 433. This language clearly indicates that provisions which are reasonably designed to meet legitimate governmental interests in informing voters as to candidates' qualifications would past constitutional muster. The District Court specifically found that the use of party designations and professional titles on ballots "meet[s] legitimate governmental interest in informing the electorate as to candidates." (A-6). The Eighth Circuit Court of Appeals affirmed, stating that "the State of Arkansas has a 'legitimate governmental interest in informing the electorate as to the candidates.'" (A-3). Clearly, there is no conflict between *Martin* and the lower Courts' rulings herein.

The issue in *Celebrezze* was the constitutionality of an Ohio statute requiring an independent presidential candidate to file a statement of candidacy in March in order to appear on the November general election ballot. The Court held that a state's legitimate interest in voter education did not justify the burdens on the candidate's Fourteenth Amendment rights and the voters' First Amendment right of association placed by the statute in question. The *Celebrezze* case is inapposite. There is no parallel between that decision and the case at hand. The Fourteenth Amendment issue in *Celebrezze* was whether it was justifiable to treat independent candidates differently from party candidates. Petitioner cites the case in the Jurisdiction section of the Petition, but advances no argument showing how it conflicts with the lower Court's decisions herein. Respondent submits that there is no conflict because the issues are different, and for that reason, jurisdiction by this Court should not be exercised over this matter.

II. THE LOWER COURTS APPLIED THE PROPER STANDARD OF SCRUTINY IN DETERMINING THE CONSTITUTIONALITY OF ARK. CODE ANN. §7-7-305(c).

The sole question on review is whether the lower Courts applied the proper standard, that is, the legitimate governmental interest standard, in determining the constitutionality of Ark. Code Ann. §7-7-305(c).

In contending that the overwhelming governmental interest standard should have been applied, Petitioner argues that the stricter standard is appropriate because the right to vote is a fundamental right. Respondent agrees that the right to vote is fundamental, but wishes to point out that the statute in question cannot be found to interfere with anyone's right to vote. Petitioner's complaint is, rather, that the provision interferes with his right to run for elective office. No authority is presented to show that running for office is a fundamental right, because there is no such authority.

Petitioner argues that the statute gives an unfair edge to an incumbent because it entitles him to run as "Judge" whereas the challenger cannot use such a title. He claims that this results in impermissible "vote dilution."

A recent decision of this Court reveals that Petitioner has not stated a claim for vote dilution. In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the issue was whether certain multimember legislative districts in North Carolina impaired the ability of black voters to elect representatives, in violation of §2 of the Voting Rights Act. In *Thornburg*, the Court analyzes and discusses at length the factors in determining whether a vote dilution claim exists. Such a claim is based

upon allegations of dilution of minority voting strength. Vote dilution refers to the impermissible discriminatory effect that a multimember or other district plan has when it operates to cancel out or minimize the voting strength of racial groups. See, *McNeil v. Springfield Park District*, 851 F.2d 937, (7th Cir. 1988). Receiving fewer votes than one's opponent does not constitute having one's vote "diluted." If this were the case, any losing candidate could assert a claim under the Voting Rights Act by contending that the loss was a result of unconstitutional "vote dilution."

Petitioner has mischaracterized the right sought to be protected in order to qualify for a stricter standard of scrutiny. Clearly, his complaint goes to his right to run for elective office rather than his right to vote. Because no fundamental right was involved, the District Court's application of the legitimate governmental interest test, rather than a stricter standard, was appropriate in determining that §7-7-305(c) permissibly serves to inform the electorate as to candidates' qualifications.

III. CONCLUSION.

For the reasons states in this brief, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

WINSTON BRYANT
Attorney General
Counsel of Record

By: JEANETTE L. HAMILTON
#86075
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201-2610
(501) 682-2007

Attorneys for Respondent